

## **EXHIBIT I**



**STATE OF ALABAMA**  
ALABAMA PUBLIC SERVICE COMMISSION  
P.O. BOX 991  
MONTGOMERY, ALABAMA 36101-0991

January 15, 2002

JIM SULLIVAN, PRESIDENT  
JAN COOK, ASSOCIATE COMMISSIONER  
GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.  
SECRETARY

Azita Sparano  
Director - Regulatory and Policy  
John Staurulakis Incorporated  
Brookside Court, Suite 135  
4625 Alexander Drive  
Alpharetta, Georgia 30022

Dear Ms. Sparano:

I am in receipt of your Request for Clarification Regarding the Alabama Public Service Commission's Jurisdiction for Designation of Commercial Mobile Radio Service Providers as Eligible Telecommunications Carriers (the "filing") which you submitted to the Alabama Public Service Commission (the "APSC") on January 14, 2002, on behalf of your client Farmers Cellular Telephone, Inc. ("FCT"). I understand from your filing that FCT is a Commercial Mobile Radio Service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide cellular telecommunications services.

According to your representations, the service territory of FCT encompasses Rural Service Area 308B2. Said territory covers the northeastern portion of Alabama, including DeKalb, Cherokee, and part of Jackson counties. I understand from your filing that FCT is seeking designation as an ETC in a portion of its service territory that includes both rural and non-rural Alabama wireline service areas.

As recognized in your filing, state commissions have primary responsibility under 47 USC §214(e) for the designation of eligible telecommunications carriers ("ETCs") in their respective jurisdictions for universal service purposes. The APSC established the guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997. As a threshold matter, your filing seeks clarification as to whether the APSC has jurisdiction over FCT's request to be designated as a universal service eligible telecommunications carrier in a portion of its service territory that includes both rural and non-rural Alabama wireline service areas.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services and commercial mobile radio services is one that was rather recently addressed by the APSC. The APSC indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June

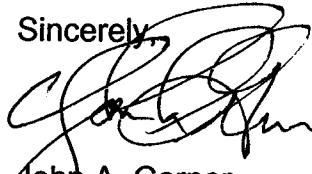
AZITA SPARANO  
JANUARY 15, 2002  
PAGE #2

of 1999, the APSC has no authority to regulate *in any respect* cellular services, broadband personal communications services and commercial mobile radio services in Alabama.

Given the above conclusion by the APSC, it seems rather clear that the APSC has no jurisdiction to take action on any request by FCT for ETC status in this jurisdiction to provide wireless ETC service. FCT should instead pursue its ETC designation with the FCC as provided by 47 USC §214(e)(6).

Although the views expressed herein are those of your writer and do not necessarily constitute an official action of the APSC, I am confident that this writing provides the clarification you requested concerning the ETC designation of your client. Should you need further clarification in order to pursue an ETC designation for FCT at the FCC, please do not hesitate to contact me at (334) 242-5200.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Garner", written over the word "Sincerely,".

John A. Garner  
Administrative Law Judge

JAG:klr

## **EXHIBIT II**

# Alabama Public Service Commission

## Orders

**BELLSOUTH MOBILITY, INC.;**

**POWERTEL, INC.;**

**PRIMECO PERSONAL COMMUNICATIONS, L.P.;**

**GTE WIRELESS INCORPORATED;**

**GTE MOBILNET OF ALABAMA INCORPORATED;**

**GTE MOBILNET OF GADSDEN INCORPORATED;**

**ALLTEL COMMUNICATIONS OF ALABAMA;**

**TRITEL COMMUNICATIONS, INC.,**

**Petitioners**

**IN RE: PET  
DECLARATORY RU**

**DOCKET 26414**

**ORDER**

**BY THE COMMISSION:**

By a joint filing received December 27, 1999, providers of Commercial Mobile Radio Service ("CMRS") in Alabama petitioned the Commission for a declaratory ruling that the Commission has no authority to regulate CMRS or any terms or conditions of services offered by CMRS providers. The petitioning CMRS providers are BellSouth Mobility, Inc.; Powertel, Inc.; PrimeCo Personal Communications, L.P.; GTE Wireless Incorporated; GTE Mobilnet of Alabama Incorporated; GTE Mobilnet of Gadsden Incorporated; ALLTEL Communications of Alabama; and Tritel Communications, Inc. (hereinafter collectively called "the Petitioners")

The Petitioners contend that the Alabama legislature has excluded CMRS and CMRS providers from the regulatory authority of the Commission by amendments to § 40-21-120 of the Alabama Code that became effective on June 9, 1999.

### **DISCUSSION AND CONCLUSIONS**

The Commission has the authority to regulate a service or the providers of a service only to the extent

that the Alabama legislature has given the Commission such authority. Boswell v. Whatley, 345 So.2d 1324 (Ala.1977). The Commission's authority to regulate CMRS and CMRS providers is found in the Alabama Radio Utility Act, Alabama Code § 37-4-100 through 37-4-117.

Effective August 10, 1994, the United States Congress preempted Alabama and all other states from exercising rate and entry regulation over CMRS and CMRS providers. See Omnibus Budget Reconciliation Act of 1993, § 6002(b), codified at 47 U.S.C. § 332(c)(3) (hereinafter called "the Budget Act"). The Budget Act did not preempt states from regulating terms and conditions of service unrelated to rates and entry, however. Accordingly, after the Budget Act, the Commission retained its regulatory authority over CMRS and CMRS providers derived from the Alabama Radio Utility Act to the extent that such authority was not preempted by the Budget Act.

By Order entered March 9, 1998, the Commission clarified its regulatory authority over CMRS and CMRS providers. See Order, RE: Regulation of other terms and conditions of services offered by Commercial Mobile Radio Service Providers in the State of Alabama, Docket 26414 (the "March 9, 1999, Order"). In the March 9, 1999, Order the Commission determined that it had authority over and would regulate CMRS and CMRS providers concerning "customer billing information, billing disputes and other consumer protection matters, facilities siting issues, transfers of control, bundling of services, the requirement that carriers make capacity available on a wholesale basis and all other matters that fall within a state's lawful authority." See March 9, 1999, Order at 2. The Commission ordered CMRS providers to submit annual reports, pay supervision and inspection fees, submit tariffs describing the terms and conditions of service, and file appropriate forms with the Commission including notifications of intent to provide service in Alabama. Id. As discussed above, the Commission found its authority for so regulating CMRS and CMRS providers in the Alabama Radio Utility Act, Ala. Code § 37-4-100 through 37-4-117. See March 9, 1999, Order at 1-2.

In 1990, the Alabama legislature removed the Commission's authority to regulate "cellular radio telecommunication provider[s], "see Ala. Code § 40-21-120(1)b and (2) (prior to 1999 amendments), and "cellular radio telecommunications services." see Ala. Code § 40-21-120(1)a and (2) (prior to 1999 amendments).

Effective June 9, 1999, the Legislature amended § 40-21-120 to delete the word "radio" from §§ 40-21-120(1)b and (2). In this amendment, the Legislature also expanded the definition of "cellular telecommunication services" in Ala. Code § 40-21-120(1)a and the definition of "cellular telecommunication provider" in Ala. Code § 40-21-120(1)b. Specifically, the Legislature defined "cellular telecommunications services" to include "cellular services," "broad band personal communications services," and "commercial mobile radio services." See Ala. Code § 40-21-120. The Legislature defined "cellular telecommunication provider" as "all licensees of the Federal Communications Commission to provide cellular telecommunication services, broadband personal communications services, and commercial mobile radio services, and shall include all resellers of such services." See Ala. Code § 40-21-120(1)b.

The Commission finds that in the June 9, 1999, amendments to Ala. Code § 40-21-120(2) and (1)a, the Legislature removed the Commission's regulatory authority over cellular telecommunications services, which includes all cellular services, broadband personal communications services, and CMRS. The Commission further finds that in the June 9, 1999, amendments to Ala. Code § 40-21-120(2) and (1)b, the Legislature removed the Commission's regulatory authority over cellular telecommunications providers, which includes all licensees of the Federal Communications Commission to provide cellular services, broadband personal communications services and CMRS. Accordingly, the Commission finds that the Petitioners' Petition for Declaratory Ruling is due to be granted as a matter of law and that the Commission should clarify its regulatory authority in light of the June 9, 1999, amendments to Ala.

Code § 40-21-120.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That Petitioners' Petition for Declaratory Ruling is hereby GRANTED.

IT IS, THEREFORE, DECLARED BY THE COMMISSION, That as a result of the June 9, 1999, amendments to Ala. Code §§ 40-21-120(2) and (1)a, the Commission has no authority to regulate in any respect cellular services, broadband personal communications services, and commercial mobile radio services.

IT IS FURTHER DECLARED BY THE COMMISSION, That as a result of the amendments to Ala. Code §§ 40-21-120(2) and (1)b, the Commission has no authority to regulate in any respect licensees of the Federal Communications Commission that provide cellular services, broadband personal communication services, and commercial mobile radio services in the State of Alabama, including resellers of such services, insofar as the Commission's regulation of such licensees pertain to such services.

IT IS FURTHER ORDERED BY THE COMMISSION, That the Commission's Order Re Regulation of other terms and conditions of services offered by Commercial Mobile Radio Service providers in the state of Alabama, Docket 26414 (March 9, 1999), is hereby VACATED.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof to apply retroactively in accordance with the effective dates provided in the June 9, 1999, amendments to Ala. Code § 40-21-120.

DATED at Montgomery, Alabama, this 2d day of March, 2000.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

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## **EXHIBIT III**



**STATE OF ALABAMA**  
**ALABAMA PUBLIC SERVICE COMMISSION**  
**P.O. BOX 681**  
**MONTGOMERY, ALABAMA 36101-0681**

**JIM SULLIVAN, PRESIDENT**  
**JAN COOK, ASSISTANT COMMISSIONER**  
**GERARD E. WALLACE, JR., ASSISTANT COMMISSIONER**

**WALTER L. THOMAS, JR.**  
**SECRETARY**

**PINE BELT CELLULAR, INC. and PINE**  
**BELT PCS, INC.,**

**Joint Petitioners**

**PETITION: For ETC status and/or**  
**clarification regarding the jurisdiction**  
**of the Commission to grant ETC status**  
**to wireless carriers.**

**DOCKET U-4400**

**ORDER**

**BY THE COMMISSION:**

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

**DOCKET U-4400 - #2**

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 20, 1997 (FCC 97-418) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 28414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, in any respect, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

DOCKET U-4400 - #3

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.


IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12<sup>th</sup> day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

  
Jim Sullivan, President

  
Jan Cook, Commissioner

  
George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

  
Wallace L. Thomas, Jr., Secretary

## **EXHIBIT IV**

**Farmers Cellular Petition for Designation as ETC,  
Filed August 19, 2002**

**Declaration of Gary Kirk**

**I, Gary Kirk, do hereby declare under penalty of perjury that:**

- 1. I am General Manager of Farmers Cellular Telephone, Inc. ("Farmers");**
- 2. This Declaration is submitted in support of Farmers' foregoing Petition for Designation as an Eligible Telecommunications Carrier ("Petition") to serve in Alabama;**
- 3. I have reviewed the Petition and the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge;**
- 4. Farmers currently provides cellular service in Rural Service Area ("RSA") 308B2, including all areas comprising its designated service area. as stated in the Petition, Farmers meets the criteria for ETC designation as explained herein;**
- 5. I hereby certify that, as described in the Petition, Farmers is not subject to the jurisdiction of a state commission;**
- 6. Farmers currently offers and is able to provide, within its designated service area, the services and functionalities identified in 47 C.F.R. §54.101(a) listed below and fully described in the Petition;**
- 7. Voice-grade access to the public switched telephone network;**
  - a. Local Usage;**
  - b. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent;**
  - c. Single-party service or its functional equivalent;**
  - d. Access to emergency services;**
  - e. Access to operator services;**
  - f. Access to interexchange service;**
  - g. Access to directory assistance;and**
  - h. Toll limitation for qualifying low-income consumers;**

**Farmers Cellular Petition for Designation as ETC,  
Filed August 19, 2002**

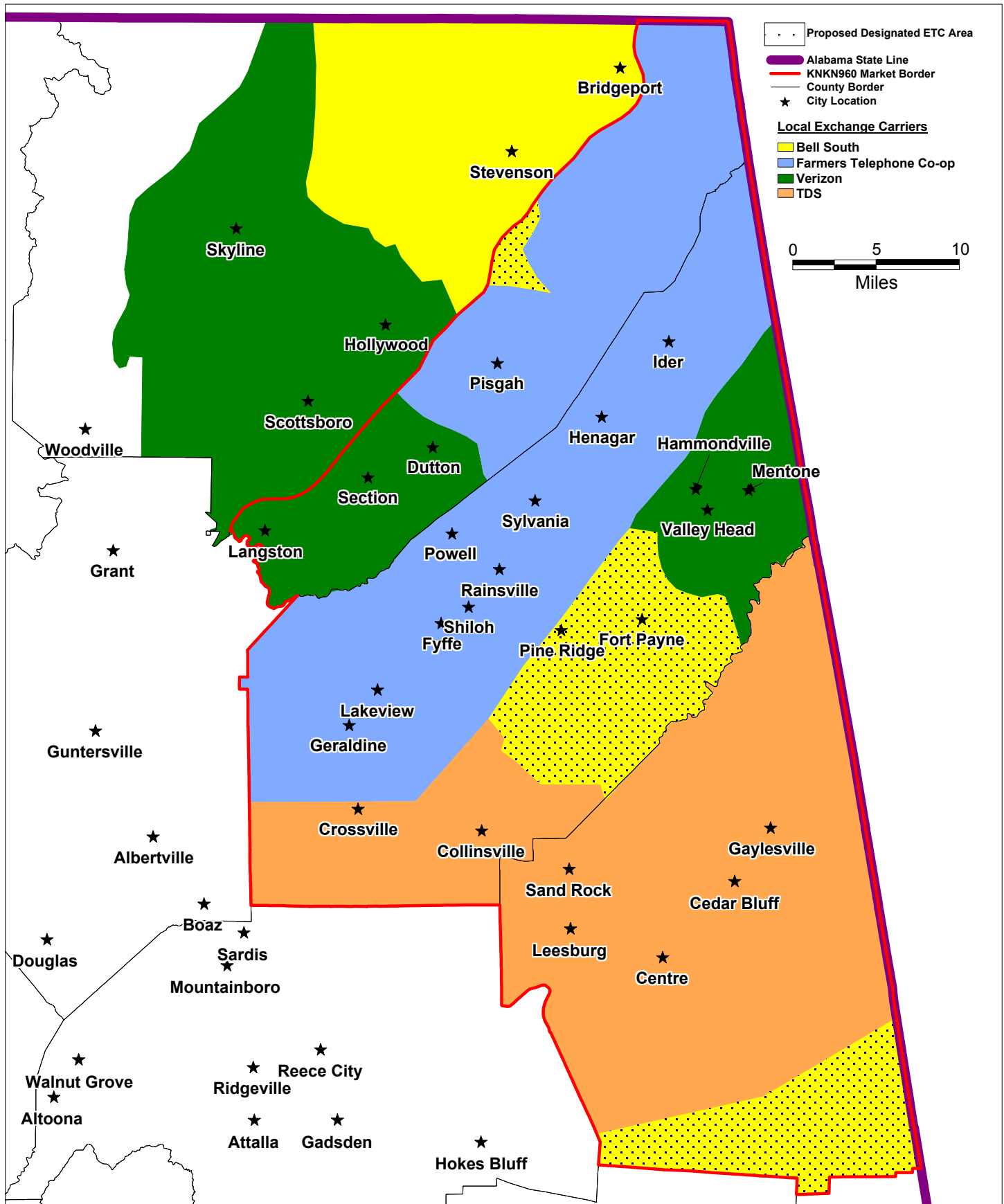
8. Farmers will provide the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;
9. Farmers advertises, or will advertise, the availability of supported services and the charges therefor using media of general distribution as described in the Advertising Plan described in the Petition;
10. To the best of my knowledge, neither Farmers, nor its officers, directors, or persons holding 5% or more of Farmers' outstanding stock or shares (voting and/or nonvoting), as specified in Section 1.2002(b) of the Commission's Rules, are subject to a denial of federal benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862; and
11. The foregoing is true, complete and correct to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
Gary Don Kirk

Dated: August 16, 2002

## **EXHIBIT V**





August 5, 2002

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Suite 200  
 1000 Potomac Street, N.W.  
 Washington, D.C. 20007  
 (202) 328 - 4500

## **EXHIBIT VI**

**Exhibit VI**

**NON-RURAL LEC WIRE CENTERS**

LEC: BellSouth Telecommunications, Inc. d/b/a South Central Bell

|               |                       |
|---------------|-----------------------|
| Wire Centers: | Fort Payne (FTPYALMA) |
|               | Stevenson (STSNALMA)  |
|               | Piedmont (PDMTALMA)   |